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REMARKS

The election of Species requirement contends that the application is drawn to numerous species of the claimed invention. The Examiner requires restriction on the grounds that the species are patentably distinct from each other. The Applicants believe this restriction to be improper and unduly burdensome on the Applicants and respectfully traverse this requirement. Favorable reconsideration and withdrawal of the election of species requirement is respectfully requested in view of the following remarks

According to MPEP §808, the Examiner is required to provide reasons as to why the inventions as claimed are distinct and the reasons for insisting upon restriction therebetween as set forth in section §§808.01 to 808.02. No such reasons are provided in the Office Action dated December 18, 2002.

Moreover, even if there are numerous species of inventions in the present case, the Examiner has failed to show what, if any, burden the PTO will incur in examining them in the same application. The rules require the Examiner to show that there would be some undue burden on the PTO to examine separate inventions in a single application. MPEP §803 sets forth the manner in which the Examiner must proceed as follows:

"If the search and examination of an entire application can be made without serious burden, the Examiner must examine all claims on the merits, even though it include claims to distinct or independent inventions."

This requirement of demonstrating a "serious burden" is satisfied only if the Examiner gives a reason approved by the Commissioner for requiring restriction. As discussed *supra*, no such reasons were provided in the recent Office Action.

Acceptable reasons that have been sanctioned by the Commissioner are set forth in

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MPEP 802.02. If the reason for requiring restriction is that there are *separate classifications* of the separate inventions, then Applicants respectfully request the Examiner provide the classifications for each species the search is to be conducted. If the reasons are that *separate fields of search* would be required, the Applicants respectfully request the Examiner provide the fields of Search required for each species. Likewise, if the reasons for the restriction are that the allegedly distinct inventions have achieved a *separate status in the art*. Applicants respectfully request that the Examiner provide the status to be accorded to all of the separate inventions. Since there are no references to any of the approved burdens in the present Office Action, the restriction requirement appears to be improper. Applicants respectfully request that the Examiner withdraw the restriction requirement or provide detailed reasons in support of its position.

The Examiner has grouped the species according to Figures 2a and 2b, Figure 3, Figure 4, Figure 5, Figure 6, Figure 7, and Figure 8. It appears that the Examiner considers the arrangement of the LEDs to constitute separate species. However, Figure 8 is directed to a schematic circuit diagram and Figures 2a and 2b are directed to troffer fixtures. Since numerous claims are not directed to the arrangement of LEDs, it is requested that they be included in the group of claims readable on the species elected and embodied in Figure 7.

Applicant is entitled to claim his invention generically. In view of this, it is submitted that Claim 1 is generic to species shown in Figure 3, Figure 4, Figure 5, Figure 6, Figure 7, and Figure 8. For similar reasons, it is submitted that Independent Claim 9 is generic to species shown in Figure 3, Figure 4, Figure 5, Figure 6, Figure 7, and Figure 8. In view of the generic concept of Applicants' invention, e.g., an LED light tube with prongs adapted to electrically communicate with a fluorescent light socket, it is not believed that the search encompassing the different arrangements of LEDs would constitute any additional burden on the Examiner. Thus, rather than unnecessarily fragmenting the invention into numerous and expensive applications, it is respectfully requested that the Examiner reconsider and examine the application in its entirety.

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In any event, Applicant notes that upon the finding of an allowable genus, e.g., Claim 1, any species embraced by the genus that have been withdrawn from consideration must be transferred to the allowable genus embodying the elected subject matter. MPEP §809.02(c)(2) Applicant believes the generic claims of this application are clearly allowable over the prior art. Since the non-elected species are fully embraced by the generic claims, allowance of the application is earnestly solicited. It is respectfully requested that the Examiner acknowledge that the non-elected species are no longer withdrawn from consideration, as required by MPEP §809.02(c)(2)], and include them with the allowable claims.

Respectfully submitted,

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